

Title 8: Education – Institutions of Higher Learning

Part 11: Legal Matters

Chapter 1

1109 Rules for Oral Proceedings

The Board hereby adopts the following Model Rule on Rulemaking Oral Proceedings which applies to all oral proceedings held before the Board for the purpose of providing the public with an opportunity to make oral presentations on proposed new policies and bylaws and any amendments to the Board's *Policies and Bylaws* pursuant to the Administrative Procedures Law.

1. Scope
These rules apply to all oral proceedings held for the purpose of providing the public with an opportunity to make oral presentations on proposed new rules and amendments to rules before the Board pursuant to the Administrative Procedures Law.
2. When an Oral Proceeding will be Scheduled on a Proposed Rule
Where an oral proceeding has not previously been held or scheduled, the Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.
3. Format of Request
 - a. Each request must be printed or typewritten, or must be in legible handwriting. Each request must be submitted on standard business letter-size paper (8-1/2 inches by 11 inches).
 - b. The request may be in the form of a letter addressed to the Board or as a pleading filed with a court.
 - c. Each request must include the full name, telephone number, and mailing address of the requestor(s).
 - d. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request.
4. Notification of Oral Proceeding
The date, time and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

5. Presiding Officer

The Agency Head or designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

6. Public Presentations and Participation

- a. Public participation shall be permitted at oral proceedings in accordance with the following sections.
- b. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.
- c. Persons wishing to make oral presentations at such a proceeding shall notify the Board at least three business days prior to the proceeding and indicate the general subject of their presentations. The presiding officer in his or her discretion may allow individuals to participate that have not previously contacted the Board.
- d. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer.
- e. The presiding officer may place time limitations on individual oral presentations when necessary to assure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.
- f. Persons making oral presentations are encouraged to avoid restating matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceeding.
- g. There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

7. Conduct of Oral Proceeding

a. Presiding Officer

The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceeding. The presiding officer shall (i) call proceeding to order; (ii) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule; (ii) call on those individuals who have contacted the Board about speaking on or against the proposed rule; (iii) allow for rebuttal statements following all participants' comments; (iv) adjourn the proceeding.

b. Questions

The presiding officer, where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The

presiding officer may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

c. **Physical and Documentary Submissions**

Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board, part of the rulemaking record, and are subject to the Board's public records request procedure.

d. **Recording**

The presiding officer may record oral proceedings by stenographic or electronic means.

(BT Minutes, 9/2006)

Chapter 2

1110 Requests for Declaratory Opinions

1. **Scope of Rules**

These sections set forth the Board's rules governing the form and content of requests for declaratory opinions and the Board's procedures regarding the requests as required by Mississippi Code § 25-43-2.103.

2. **Persons Who May Request Declaratory Opinions**

- a. Any person with a substantial interest in the subject matter may make a request to the Board for a declaratory opinion by following the specified procedures.
- b. "Substantial interest in the subject matter" as used in this policy means: that a party is directly affected by the Board's administration of the laws within the Board's primary jurisdiction.
- c. "Primary jurisdiction of the Agency" as used in this policy means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

3. **Subjects Which May Be Addressed In Declaratory Opinions**

- a. The Board will issue declaratory opinions regarding the applicability to specified facts of:
 1. a statute administered or enforceable by the Board,
 2. a rule promulgated by the Board, or
 - an order issued by the Board.

4. **Circumstances In which Declaratory Opinions Will Not Be Issued**

- a. The Board may, for good cause, refuse to issue a declaratory opinion. Without limiting the generality of the foregoing, the circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:
 1. the matter is outside the primary jurisdiction of the Board;
 2. lack of clarity concerning the question presented;
 3. there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make an answer unnecessary;
 4. the statute, rule, or order on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
 5. the facts presented in the request are not sufficient to answer the question presented;
 6. the request fails to contain information required by these rules or the requestor failed to follow the procedure set forth in these rules;
 7. the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the rule, statute or order on which a declaratory opinion is sought;
 8. no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute, rule, or order;
 9. the question presented by the request concerns the legal validity of a statute, rule or order;
 10. the request is not based upon facts calculated to aid in the planning of future conduct, but is, instead, based on past conduct in an effort to establish the effect of that conduct;
 11. no clear answer is determinable;
 12. the question presented by the request involves the application of a criminal statute or sets forth facts which may constitute a crime;
 13. the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
 14. the question is currently the subject of an Attorney General's opinion request; or
 15. the question has been answered by an Attorney General's opinion.
- b. A declaratory opinion will not be issued where a similar request is pending before this agency, or any other agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law.
- c. A declaratory opinion will not be issued if it may adversely affect the interests of the State, the Board, or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise.

- d. Where a request for a declaratory opinion involves a question of law, the Board may refer the matter to the State Attorney General.
 - e. A declaratory opinion will not be issued where the question involves eligibility for a license, permit, certificate or other approval by the Board or some other agency and there is a statutory or regulatory application process by which eligibility for said license, permit, or certificate or other approval may be determined.
5. Form of the Request for a Declaratory Opinion
- a. Written Requests Required. Each request must be printed, typewritten or in legible handwriting. Each request must be submitted on standard business letter-size paper (8 1/2" by 11"). Requests may be in the form of a letter addressed to the Board or in the form of a pleading as might be addressed to a court.
 - b. Where to Send Requests. All requests must be mailed or delivered to the Board at 3825 Ridgewood Road, Jackson, Mississippi 39211. The request and its envelope shall clearly state that it is a request for a declaratory opinion. Oral and telephone requests are unacceptable.
 - c. Name, Address and Signature of Requestor. Each request must include the full name, telephone number, and mailing address of the requestor. All requests shall be signed by the person filing the request, unless represented by an attorney, in which case the attorney may sign the request. The signing party shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any agency, administrative or judicial tribunal.
 - d. Single transaction. A request must be limited to a single transaction or occurrence.
 - e. Question Presented. Each request must contain the following:
 - 1. a clear identification of the statute or rule at issue;
 - 2. the question for the declaratory opinion;
 - 3. a clear and concise statement of all facts relevant to the question presented;
 - 4. the identify of all other known persons involved in or impacted by the factual situation causing the request including their relationship to the facts, name, mailing address and telephone number; and
 - 5. a statement sufficient to show that the person seeking relief has a substantial interest in the subject matter.
 - f. The terms of the proposed opinion suggested by the requestor may be submitted with the request or may be requested by the agency;
 - g. Memorandum of Authorities. A request may contain an argument by the requestor in support of the terms of the proposed opinion suggested by the requestor. The argument may be submitted in the form of a memorandum of authorities, containing a full discussion of the reasons and any legal authorities, in support of such position of the requestor. The agency may

request that the argument and memorandum of authorities be submitted by any interested party.

6. Time for Agency's Response

- a. Agency's Response. Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:
 1. issue an opinion declaring the applicability of the specified statute, rule, or order to the specified circumstances;
 2. decline to issue a declaratory opinion, stating the reasons for its action; or
 3. agree to issue a declaratory opinion or a written statement declining to issue a declaratory opinion, by a specified time but no later than ninety (90) days after receipt of the written request.
- b. When Period Begins. The forty-five (45) day period shall begin on the first State of Mississippi business day that the request is received by the Board.
- c. Opinion Not Final for Sixty Days. A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

7. Procedure after Request for Declaratory Opinion Received

- a. Notice by Agency. The Board may give notice to any person that a declaratory opinion has been requested and may receive and consider data, facts, arguments and opinions from persons other than the requestor.
- b. Notice by Requestor. The requestor, or his attorney, shall append to the request for a declaratory opinion a listing of all persons, with addresses, known to the requestor who may have an interest in the declaratory opinion sought to be issued, and shall mail a copy of the request to all such persons. The requestor or his attorney shall certify that a copy of the request was mailed to all such persons together with this statement: "Should you wish to participate in the proceedings of this request, or receive notice of such proceedings or the declaratory opinion issued as a result of this request, you should contact the Board within twenty days of the date of this request."

8. Hearings at the Discretion of the Agency

- a. Provision for Hearing. If the Board in its sole discretion deems a hearing necessary or helpful in determining any issue concerning a request for a declaratory opinion, the Board may schedule such a hearing. Notice of the hearing shall be given to all interested parties unless waived. Notice

mailed by first class mail 7 calendar days prior to the hearing shall be deemed appropriate.

- b. Proceedings at the Hearing. The procedure for conducting a hearing, including but not limited to the manner of presentation, the time for presentation, and whether and how evidence may be taken, shall be within the discretion of the Board.
- c. Persons Appearing at the Hearing. The Board shall allow the requestor to participate in any hearing. The Board may allow any other persons or entities to participate in the hearing.

9. Public Availability of Requests and Declaratory Opinions.

Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying at the expense of the viewer during normal business hours. All declaratory opinions and requests shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from this requirement and shall remain confidential.

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